

**BYLAWS AND RULES OF PROCEDURE
ETHICAL PRACTICES BOARD
CITY OF MINNEAPOLIS**

SECTION 1

The Ethical Practices Board

- 1.1 Powers and Duties. The powers and duties of the Ethical Practices Board shall be as provided in the Minneapolis Code of Ordinances, Chapter 15 [which may hereinafter also be referred to at the "City's Ethics Code"].
- 1.2 Membership. Membership of the Board shall be as provided in Section 15.210 of the City's Ethics Code.

SECTION 2

Officers

- 2.1 Officers. The officers of the Board shall be a Chair and Vice Chair.
- 2.2 Election of Officers. After its establishment, the Board shall elect one of its members to be Chair and one to be Vice Chair. Thereafter, at the Board's first meeting of each calendar year, the Vice Chair shall take the office of Chair and the Board shall elect one of its members to be the next Vice Chair.
- 2.3 Vacancy. Should an office become vacant, the Board shall elect a successor for the unexpired term of said office.

SECTION 3

Duties of Officers

- 3.1 Chair. The Chair shall have the duties and powers usually attendant upon the office of the Chair and such other duties and powers as may be provided from time to time by the Board. The Chair shall preside at all meetings of the Board. The Chair may present to the Board matters judged to require attention and need not vacate the chair for that purpose.
- 3.2 Vice Chair. The Vice Chair shall act in the absence of the Chair at any meeting and, when the Chair is absent or disabled, all duties of the office shall temporarily devolve upon the Vice Chair.
- 3.3 Ethics Officer; Clerk to the Board. The Ethics Officer shall serve as staff to the Board and have the duties provided in Chapter 15 of the Minneapolis Code of Ordinances. The Ethics Officer shall conduct administrative duties on behalf of the Board as it shall decide

and shall have the authority to keep the papers and records of the Board. The Ethics Officer shall assist the Board in the preparation of advisory opinions.

SECTION 4 Meetings and Committees

- 4.1 Regular Meetings. Regular meetings of the Board shall be held at 3:00 on the third Tuesday of each odd-numbered month. The meetings shall be held in Room 321 of City Hall unless a different location of said meeting is desired. Adjustments to the regular meeting schedule, including adjustments for meetings that fall on holidays, shall be approved on the last regular Board meeting of the year. Should no business be pending before the board, the Chair may cancel any regularly scheduled meeting.
- 4.2 Special Meetings and Hearings. A special meeting of the Board, including a hearing on a complaint, may be called by the Chair at any time subject to applicable public notice requirements.
- 4.3 Quorum and Voting. Two members of the Board shall constitute a quorum. No business shall be transacted at any meeting except when a quorum is present. All recommendations and actions shall be by a majority vote of the membership of the Board.
- 4.4 Absence From Meetings. A member intending to be absent from a regular meeting shall request of the Chair to be excused prior to the meeting. The appointing committee for the Board shall be notified if a member has three unexcused absences from regular meetings in a calendar year.
- 4.5 Special Committees. The Chair may designate special committees to advise the Board on particular matters and for such other purposes as the Chair may deem appropriate or as the Board shall otherwise direct. Special committees may consist of Board members, non-Board members or a combination of both.

SECTION 5 Formal Binding Advisory Opinions

- 5.1 Who May Request. The Board may issue a formal written advisory opinion on its own initiative or on the request of a person, City department or other City entity to which the City's Ethics Code applies. A request for a formal advisory opinion may be made only by an individual or City body that wishes to use the opinion to guide the individual's or entity's own conduct.
- 5.2 Requests Must Be In Writing. Requests for formal written advisory opinions shall be in writing and must set out with reasonable specificity the facts and circumstances of a real

or hypothetical case. Requests shall be filed with the Ethics Officer who shall assist any person requesting a formal advisory opinion to prepare the request.

- 5.3 Discretion to Issue. Requests shall be submitted upon receipt to the Chair who shall expeditiously determine whether to issue a formal advisory opinion addressing the issues raised. The Chair's decision to issue a formal opinion shall be reported to the Board at the next regular meeting and may be overridden by majority vote of the Board.
- 5.4 Issuance. A formal opinion shall be issued by official action of the Board and shall be forwarded to the person requesting it. The Board may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from a City Department or entity, or any other information that might identify the requester, unless the person consents to the inclusion.
- 5.5 Binding. Written formal advisory opinions issued by the Board are binding on the Board in a subsequent Board proceeding concerning a complaint filed against the person making or covered by the request and the proceeding involves the subject matter of the requested opinion unless:
 - a. the Board has amended or revoked the opinion before the initiation of the Board proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
 - b. the Board finds that the request omitted or misstated material facts; or
 - c. the Board finds that the person making or covered by the request has not acted in good faith in reliance on the opinion.
- 5.6 Normal timeframe. The Board shall strive to issue its opinion within 60 days of the request. Additional time may be required for issuing an opinion due to the meeting schedule of the Board and the issues presented.

SECTION 6

Informal Non-Binding Advice

- 6.1 The Ethics Officer is authorized by the City's Ethics Code and by these rules to give oral or written informal, non-binding advice to persons seeking guidance as to the spirit or legal requirements of the City's Ethics Code. The Ethics Officer shall inform the requestor that such opinions given are not necessarily those of the Board and, although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk because it is not binding upon the Board.

SECTION 7
Complaints Alleging Violations by Elected Officials, Department Heads,
and Non-employee Local Officials

- 7.1 Any person may submit a complaint alleging a violation of the City's Ethics Code by an elected official, department head or non-employee local official (as those terms are defined in §15.280) to the Board. The Board may not consider any alleged violation that occurred before the adoption of the City's Ethics Code (March 21, 2003) or more than one year before the date of the filing of a complaint. If the violation is alleged to have begun more than a year before the filing of the complaint and to have continued to a time within the one-year period, the Board may consider the complaint.
- 7.2 Form. The Board shall provide a simple form for complaints. A complaint must include:
- a. the name and address of the complainant; and
 - b. a statement of the facts known or believed to be true that form the basis of the complaint including the approximate dates of the acts alleged; and
 - c. to the extent possible, identify the provision(s) of the Ethics Code allegedly violated; and
 - d. a certification that the complainant affirms that the facts stated are true to the best of the complainant's knowledge.

Any further information that might support the allegations should be submitted with the complaint, including but not limited to, the names and addresses of persons with personal knowledge of the facts alleged; and documents or other evidentiary material. The complaint and accompanying material shall be filed with the Ethics Officer.

No investigation is required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, or is unsigned by the complainant.

- 7.3 Oral or anonymous complaints. Oral or anonymous complaints may be submitted to the Ethics Officer or the employee Ethics Report Line; however, no investigation is required for oral or anonymous complaints. The Board may investigate an oral or anonymous complaint that states sufficient detail to identify an alleged violation and violator and which does not appear to be frivolous on its face.
- 7.4 Confidentiality. The Board shall comply with the requirements of the Minnesota Data Practices Act. The existence and status of a complaint are public data. All other information regarding the complaint shall be private. Any portion of a meeting during which the Board is hearing testimony or considering a complaint or investigation must be closed to the public. The minutes and tape recordings of a meeting closed to the public must be kept confidential. A meeting must also be open at the request of the individual who is the subject of the complaint.

- 7.5 No *ex parte* communications with Board. No complainant or subject of a complaint, or any persons acting on their behalf shall engage or attempt to engage, directly or indirectly, in any *ex parte* communication about the subject matter of a complaint with a member of the Board prior to the disposition of the complaint. A member of the Board shall not knowingly participate, directly or indirectly, in any *ex parte* communication with any person, other than a member of the Board or its staff, about any issue of fact or law relating to the complaint prior to disposition of the complaint.
- 7.6 Dismissal by Ethics Officer. The Ethics Officer may dismiss a complaint appearing to be frivolous on its face without notice to the subject of the complaint and without conducting a preliminary evaluation of the complaint. The Board shall review the complaint at its next scheduled meeting and determine whether to sustain the Ethics Officer's decision or order proceeding with Section 8 of these Bylaws and Rules of Procedure.

SECTION 8

Investigations and Hearings

- 8.1 Notice to subject of the complaint. Within a reasonable time from receipt of a complaint, the Ethics Officer shall forward a copy of the complaint and supporting materials to the subject of the complaint. The subject of the complaint may respond to the allegations in the complaint by submitting a written statement to the Ethics Officer, together with such other documents he or she feels are relevant, and a certification that the subject of the complaint affirms that the facts stated are true to the best of his or her knowledge. Any such response should be submitted to the Ethics Officer within ten business days after the subject of the complaint receives a copy of the complaint in order to ensure that the response is considered by the Ethics Officer as part of the preliminary evaluation of the complaint.
- 8.2 The Ethics Officer shall make a preliminary evaluation of the complaint and any response provided by the subject of the complaint to determine whether there is probable cause to believe that there has been a violation of the Ethics Code. A response to the complaint that is received by the Ethics Officer later than ten business days after the subject of the complaint receives a copy of the complaint is not required to be considered by the Ethics Officer as part of the preliminary evaluation of the complaint. Within twenty business days from when the complaint was received, the Ethics Officer shall report in writing to the Board findings and recommendation regarding whether the complaint establishes probable cause, and whether it should be dismissed or whether there should be further proceedings.
- 8.3 Within forty business days from the date the complaint was received, the Board shall determine whether to dismiss the complaint or to find probable cause of a violation. Notice of this determination shall be provided to the subject of the complaint. A finding

of probable cause sent to the subject of the complaint may be accompanied by a preliminary finding of the Board regarding how the violation may be cured or preliminary recommendation regarding discipline.

- 8.4 If the Board determines that there is probable cause to believe that there has been a violation of the Ethics Code, the subject of the complaint shall be offered an opportunity for a hearing before the Board at which he or she is entitled to be represented by counsel. The hearing shall be scheduled within twenty business days of the Board's determination of probable cause.
- 8.5 The Board has the discretion to conduct additional investigation prior to the hearing and may engage the services of an investigator or counsel for this purpose.
- 8.6 Hearing rules.
- a. Procedural rules. A quorum of two Board members must be present for a hearing. Any member of the Board who is not present at a hearing on a complaint may not participate in any discussion, voting, or recommendation regarding the complaint. The Chair shall preside over the hearing, unless the Board selects another of its members to preside. All testimony shall be under affirmation, which shall be administered by a member of the Board. The Board, and with the Chair's permission the Ethics Officer, may call and question any witness. The Board is not bound by the rules of evidence and may establish time limits and other rules relating to the participation of any person in the hearing, subject to subsections 8.5.b and 8.5.c below. The hearing shall be electronically recorded.
 - b. Subject of the complaint. The subject of the complaint has the right to attend the hearing, the right to make a statement, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or another advisor.
 - c. Complainant. The complainant may make a statement, may testify and present documentary evidence in support of the allegation in the complaint, and may be accompanied by legal counsel or another advisor.
 - d. At the conclusion of the evidence, the subject of the complaint, or his or her representatives, may make a closing statement to the Board.
 - e. The standard of proof shall be whether the allegations have been proven by clear and convincing evidence. "Clear and convincing evidence" is that measure or degree of proof which will produce a firm belief or conviction as to allegations sought to be established; it is more than a mere preponderance of the evidence, but less than proof beyond a reasonable doubt.
- 8.7 The Chair may extend any of the time limits in this section for a reasonable period at the request of the subject of the complaint or on the Chair's initiative in order to promote full, fair, and orderly proceedings.

SECTION 9
Disposition of Complaint

- 9.1 The Board shall make all reasonable efforts to issue written findings and recommendations within thirty business days following the hearing. The findings and recommendations shall be sent to the subject of the complaint. The complainant will be notified of the findings and recommendations to the extent permitted under the Minnesota Government Data Practices Act.
- 9.2 Complaints with sustained findings shall be reported in the manner described in § 15.240 of the Ethics Code:
- a. Findings and recommendations regarding a complaint about an elected official shall be reported to the Mayor and the assigned City Council committee.
 - b. Findings and recommendations regarding a complaint about a department head shall be reported to the appropriate appointing authority.
 - c. Findings and recommendations regarding a complaint about an appointed (non-employee) local official as defined in subsection (3) or (4) of the local official definition in § 15.280 of the Ethics Code shall be reported to the appropriate appointing authority.

SECTION 10
Amendment of the These Bylaws and Rules

- 10.1 The Board shall review these bylaws and rules at least annually. An amendment may only be considered for adoption when the subject of the amendment has been introduced at a prior meeting of the Board, except that an amendment may be adopted without prior notice when the introduction and passage of the amendment is adopted by unanimous consent of all the members of the Board.

